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17 **UNITED STATES DISTRICT COURT**
18
19 **DISTRICT OF NEVADA**

20 SWATCH, LTD., a Nevada limited liability
21 company,

22 Case No.: 2:16-cv-01629-JCM-CWH

23 Plaintiff,

24 v.
25
26 **PRELIMINARY INJUNCTION ORDER**

27 The PUBLIC UTILITIES COMMISSION OF
28 NEVADA, a Nevada Administrative Agency;
The REGULATORY OPERATIONS STAFF
OF THE PUBLIC UTILITY COMMISSION
OF NEVADA, a department within the PUCN;
NEVADA POWER d/b/a NV Energy, a Nevada
Public Utility and Monopoly; ANTHONY
SANCHEZ, Esq., an individual; ELIZABETH
ELLIOT, Esq., an individual; and CAROLYN
“LINA” TANNER, Esq., an individual;

29 Defendants.

30
31 This Court having reviewed and considered Plaintiff Switch, Ltd.’s Emergency *Ex Parte*
32 Motion for Temporary Restraining Order and Preliminary Injunction (“Plaintiff’s Motion”) and
33 Reply in support of the same (Docs. 2 and 21), Defendant Carolyn E. Tanner’s Joinder in with

1 the Limited Opposition to Motion for Preliminary Injunction Filed by the Public Utilities
 2 Commission of Nevada (“PUCN”) and Regulatory Operations Staff of the PUCN (Doc. 12), and
 3 having considered the responses of the other named yet unserved defendants in this action (Docs.
 4 10, 11, 13, and 19), together with all supporting exhibits to all briefings filed, and for other good
 5 cause shown:

6 **THE COURT HEREBY FINDS THAT:**

7 1. Carolyn “Lina” Tanner, Esq. (“Defendant TANNER”) served as General
 8 Counsel for the Defendant, the Public Utilities Commission of Nevada (“PUCN”) where she
 9 served in that capacity for over three (3) years, and her duties included ensuring the propriety and
 10 legality of PUCN activities and proceedings until she promptly resigned on June 16, 2016; one
 11 day following a complaint at a public PUCN hearing which exposed Defendant TANNER’s use
 12 of social media to discuss dockets pending before the PUCN.

13 2. Plaintiff Switch discovered TANNER’s activities a few days after June 16,
 14 2016; when TANNER’s activity was exposed by a Nevada lobbyist, Fred Voltz.

15 3. Plaintiff became aware that TANNER had used the false name
 16 “DixieRaeSparx”, “#DixieRaeSparx” or “@DixieRaeSparx” (each referred to herein as the
 17 “Handle” or the “Twitter Account” when referencing the Handle on Twitter.com) on social media
 18 to publicly discuss renewable energy and Plaintiff’s request to unbundle from the electric utility
 19 monopoly Defendant Nevada Power Company and other PUCN proceedings during the pendency
 20 of that request.

21 4. TANNER also maintained a blog (www.dixiereasparx.com) with the
 22 assistance of WordPress.com, and other social media accounts using variations of the Handle on
 23 Twitter, Pinterest, Etsy, LinkedIn, SoundCloud, Instagram, and other platforms.

24 5. TANNER communicated with other government officials via social media
 25 including during government hearings.

26 6. TANNER has since deactivated and has attempted to permanently delete,
 27 destroy or hide certain of her social media accounts and social media activity.

28 7. TANNER’s social media postings and related documentation about matters

1 pending before the PUCN are documents subject to Plaintiff's NRS 239.0107 Open Records
 2 Request.

3 8. Twitter's deactivation policy is such that unless a request for Twitter
 4 records to be preserved is made by the individual, law enforcement such as the AG's office
 5 conducting a criminal investigation, or a court, all records of a deactivated account will be
 6 permanently deleted as early as thirty (30) days from deactivation. Twitter's policy also states
 7 that a user who has attempted to deactivate an account, can enter into an arrangement with Twitter
 8 regarding its destruction or reactivate an account simply by logging into the account within the
 9 thirty (30) day post deactivation window.

10 9. TANNER deactivated her Twitter account twice, attempting to destroy
 11 evidence and putting the evidence at jeopardy, shortly after her actions were exposed on June 15,
 12 2016. The record of TANNER's Twitter account is at imminent risk of permanent destruction if
 13 not enjoined.

14 10. On July 18, 2016, this Court issued an Emergency Order for Temporary
 15 Restraining Order and Preliminary Injunction (Doc. 7). Pursuant to that Order, Defendant
 16 TANNER was ordered to cease all destruction of any evidence of or associated with social media
 17 accounts used by Defendant TANNER and to sign into and reactivate her Twitter Account by July
 18 18, 2016, among other requirements.

19 11. On July 21, 2016, TANNER filed her response to Plaintiff's Motion (Doc.
 20 12) and stated that she had unsuccessfully attempted to log back into Twitter after being served
 21 with the Order on July 18, 2016, but could not because her password would no longer work and
 22 as such, she has been unable to restore the Twitter documents which she stated "appear" to have
 23 been deleted pursuant to her earlier request (Doc. 12-1).

24 12. TANNER also relayed that she had learned of Plaintiff's concern that she
 25 would destroy records on her social media accounts as early as July 14, 2016, but took no action
 26 to either restore or preserve such records or social media accounts.

27 13. As Defendant TANNER has already taken steps to destroy the evidence at
 28 issue and took no effort to either preserve such evidence or to restore it prior to the issuance of

1 the Court's Order on July 18, 2016, Plaintiff seeks a preliminary injunction continuing the
 2 obligations of the Order (Doc. 7) during the pendency of this action.

3 14. Plaintiff's Motion is simply an effort to unwind TANNER's attempts to
 4 destroy discoverable documents during the pendency of this action and to take all possible actions
 5 necessary to restore any records lost by TANNER's termination and deletion of certain of her
 6 social media accounts.

7 15. Pursuant to the requirements of Fed. R. Civ. P. 65, Plaintiff has shown that
 8 it will likely succeed on the merits of its relevant claim with regard to Defendant TANNER
 9 obligating her under NRS 239 to preserve and maintain evidence and public records, including
 10 TANNER's postings and online activity discussing Plaintiff.

11 16. Plaintiff will suffer permanent and irreparable harm and injury absent a
 12 preliminary injunction ordering Defendant TANNER to take all possible actions to reactivate her
 13 Twitter account and enjoining Defendant TANNER from further destroying any other
 14 discoverable evidence regarding the issues raised in this matter, including any other social media
 15 accounts she may have used.

16 17. Plaintiff Switch will suffer permanent and irreparable harm and injury
 17 absent an order from this Court which orders Defendant TANNER's third party social media
 18 account providers acting in concert with her or at her direction, including Twitter.com, to preserve
 19 and make public any of her social media accounts and prevent them from being deleted or
 20 transferred absent an order from this Court. Absent this Order, Plaintiff will be deprived of the
 21 ability to recover tweets and other social media activity including likes, shares, direct messages,
 22 private messages, instant messages or other evidence of TANNER's discoverable activity online.

23 18. The balance of the equities tips demonstrably in favor of Plaintiff Switch
 24 because issuance of the preliminary injunction would merely preserve the status quo, including
 25 preserving all discoverable evidence in this case, pending trial, while the burden on Defendant
 26 TANNER to preserve and maintain such records and to take all possible action to recover deleted
 27 records is minimal. Similarly, the burden on Defendant TANNER's third party social media
 28 account providers such as Twitter.com and WordPress.com to preserve or restore deleted accounts

1 is minimal in comparison with the irreparable damage Plaintiff would incur by the permanent loss
2 of such records.

3 19. Not only is there is no likelihood of harm to the public from the issuance
4 of the preliminary injunction order now being granted, such an order furthers the public interest
5 in enjoining activities that are likely to destroy discoverable evidence relevant to the affairs of a
6 public utility.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

8 1. Plaintiff's request for a Preliminary Injunction Order is hereby
9 GRANTED.

10 2. Defendant TANNER shall cease all destruction of any evidence of or
11 associated with social media accounts used by Defendant TANNER; specifically, TANNER's
12 social media accounts using the name "@DixieRaeSparx", "#DixieRaeSparx", or
13 "DixieRaeSparx" (the "Handle" or the "Twitter Account" when referencing the Handle on
14 Twitter.com) and TANNER's blog posts on a WordPress blog maintained by TANNER on
15 www.DixieRaeSparx.com (the "Blog").

20 4. Defendant TANNER shall take all possible action to reactivate her Twitter
21 Account and the Blog immediately to ensure the evidence of conduct previously posted on the
22 same is restored and not permanently deleted.

23 5. Defendant TANNER will reactivate and take all measures to reactivate and
24 preserve for discovery all data previously posted on the webpage DixieRaeSparx.com, including
25 hard-drive and archived copies.

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1 6. Plaintiff maintain the nominal bond of hundred dollars (\$100) previously
2 posted with the Court because the evidence indicates that Defendant will suffer only minimal, if
3 any, damage by the issuance of this preliminary injunction order.

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5 IT IS SO ORDERED July 27, 2016.

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James C. Mahan
The Honorable James C. Mahan
United States District Court Judge

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